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Memorandum

TO: City Council

FROM: Ron Gonzales, Mayor
Forrest Williams, Councilmember
Nancy Pyle, Councilmember

SUBJECT: Proposed City Charter
Amendments Relating to
Restrictions on Outside
Employment and Councilmember
Salary Setting

DATE: June 16, 2006

Approved Ron Gonzales
Forrest Williams JW for NP Date 6/16/06

RECOMMENDATION

Direct that specific language for proposed City Charter amendments related to outside employment for Councilmembers and Council salary setting be prepared and brought back to the Council at its meeting of August 8 for consideration and placement on the November 7, 2006 ballot.

BACKGROUND

We request the Council consider placing Charter amendments before the voters in November 2006 related to outside employment for councilmembers and the Council salary setting process. The purpose of this memo is to outline the reasons for the two proposed amendments. If Council accepts our recommendation, we will work with the City Manager, City Attorney, and City Clerk to bring back specific ballot language for Council consideration at our August 8, 2006, meeting. This is the last regularly scheduled Council meeting for us to decide to place a matter on the ballot for this November's election before the County deadline of August 11.

DISCUSSION

Outside Employment by Councilmembers

Under the City Charter, service on the City Council is a full-time position for Councilmembers. The public expects their Councilmembers to give 100 percent attention to their responsibilities and to focus on doing the job they were elected to do by the community.

The San Jose Municipal Code and Policy Manual already prohibits City employees from having outside employment that “...*is detrimental to the service, which prevents or impedes the efficient performance of his duties in his City employment, or which is in any way in conflicts with his employment by the City...*” (see Attachment A). Under this policy City employees need permission from the City Manager to accept outside employment. The City Manager grants that permission only if he or she is satisfied that such employment will not interfere with the employee’s ability to perform his or her duties.

We propose that the public have the opportunity to vote on a City Charter amendment that would prohibit any City Councilmember, including the Mayor, from having outside employment. For example, this would prohibit Councilmembers from:

- engaging in active employment that pays wages or salaries;
- maintaining an active business or profession;
- providing services to clients; or
- being engaged in professional or employment activities that require substantial attention from a Councilmember.

This would not prohibit Councilmembers from having sources of “passive income” such as:

- pensions;
- dividends;
- interest from investments;
- or income from property.

The aforementioned types of incomes are examples of “active” and “passive” incomes and are not meant to be an exhaustive list. Should the Council approve the development of specific ballot language for November, we would recommend the City Attorney be directed to include a clear definition of “active” and “passive” income as part of the Council’s consideration of ballot language on August 8. We also recommend the City Attorney be directed to propose language to enforce this provision.

The purpose of this proposed restriction is to ensure that Councilmembers do not “moonlight” while serving the public as elected officials. They should not have employment that interferes with their ability to carry out their Council duties in a timely way, requires them to abstain in matters that regularly come before the Council, or create a perception that they are not fully carrying out their responsibilities as members of San José City Council.

This recommendation would *not* apply to City Council staffs as their salaries are set in the same manner as other City employees in their classification. However, we would recommend that Council staffs be subject to similar employment restrictions as other City employees requiring them to receive written permission from their Councilmember to accept outside employment. Similar to other City employees, non-compliance with this provision could be grounds for dismissal. This provision could be affected either by an amendment or addition to the Municipal Ordinance or inclusion in the City Charter. We would request the City Attorney be directed to

bring back the provision as either a change to the Municipal Code or the City Charter as part of the Council's final review in August.

There already is an appropriate restriction on outside employment for our City employees. It is time to include elected officials and their staffs so that our residents know that their Councilmembers are focused on working exclusively for them.

Council Salary Setting

The City Charter established the Council Salary Setting Commission to recommend appropriate compensation for the City Council every two years. The Commission's charge is to recommend a salary that *"... shall be in an amount which takes into account the full time nature of the office and which is commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations."* The Charter does not allow Council salaries to be set in any other manner (Attachment B).

Over the years, the Commission has done a commendable job of formulating recommendations for Council consideration (Attachment C). In the last two cycles, however, the Council has declined to adopt the Commission's recommendations, primarily to set an example during fiscally difficult times. Over the long term there are practical and adverse impacts for the City Council and City government that outweigh short-term budgetary reasons for declining to act on the Commission's recommendations.

Service on the City Council should not require either independent wealth or financial sacrifice. Voters should be able select from well-qualified candidates for office who offer the best leadership abilities, management skills, and professional expertise available in our community, rather than merely those who can afford the major commitments of public service.

Because service as a Councilmember is already a full-time job, this is a critical factor in setting appropriate and competitive Council salaries. Councilmembers should not be burdened with the need for income from outside employment to make ends meet. Making sure that Councilmembers are fairly and appropriately compensated, once in office, will therefore lead to a broader range of residents who could seriously consider public service without the risk of financial penalties for their families.

By taking this approach, the public can be assured that the Commission is successfully and objectively carrying out the City Charter's intent that Councilmembers are paid in a way that reflects their full-time responsibilities and at levels that are comparable to other positions with similar duties and obligations. Individual Councilmembers who do not want to take a pay increase would always have the personal option of donating a portion of their salary or any increase to charity.

This recommendation complements the Mayor's proposal for "voter-owned" elections currently being studied by the Elections Commission. The goal for both concepts is to encourage more candidates with greater diversity of talents and experience to run for office. Publicly financed

campaigns will remove the need for candidates to raise campaign contributions from special interests, which has been a significant obstacle for many people. Appropriate, competitive, and objective compensation will help to attract the best candidates interested in serving on the City Council. The combination will further our objective of ensuring that our City government will have the quality of leadership that the current City Council is committed to and that our community deserves.

Conclusion

Amending the City Charter to prohibit outside work or employment and to provide compensation for Councilmembers consistent with their responsibilities while serving on the Council will achieve several benefits for the people of San Jose and our City government. It will:

1. Further the goal of "clean" government.
2. Focus greater Councilmember commitment to service while on the Council.
3. Reduce the potential for conflicts of interests.
4. Keeping the process objective and fair.
5. Enable more residents to consider public service on the Council.

Next Steps

If Council approves, we will work with the City Manager, City Attorney and City Clerk on drafting specific language for these two amendments (and the provision for Council staffs) to bring back to Council for consideration and action at our meeting on August 8. This is the last regularly scheduled Council meeting before the County's deadline of August 11 to place matters on the ballot for the November 7, 2006, election.

Attachments:

- A. San Jose Municipal Code, §3.04.1710A, Outside Employment of City Employees
- B. City Charter Section 407: The Council, Compensation
- C. History of San Jose Salary Setting Commission recommendations and Council salaries

Attachment A

SAN JOSE MUNICIPAL CODE

Section 3.04.1710. Restriction on outside work.

- A. No employee shall engage in any work, employment or occupation outside his city employment which is detrimental to the service, which prevents or impedes the efficient performance of his duties in his city employment, or which is in any way in conflict with his employment by the city. No employee shall engage in any work, employment or occupation outside his city employment unless and until he shall have notified the city manager of his intention to do so.
- B. If the city manager determines that any work, employment or occupation outside his city position is detrimental to the service, or prevents the efficient performance by an employee of his duties in his city employment, or is in conflict with the city employment of any such employee, then the city manager may impose reasonable conditions or limitations upon any outside work, employment or occupation authorized hereunder, or may order an employee to terminate such outside work, employment or occupation at any time.
- C. Any violation of any provision of this rule may be deemed grounds for discharge or other disciplinary action. Any employee affected by a denial of an outside work permit, or limitations or conditions upon any outside work imposed by the city manager, may appeal such action to the commission whose decision shall be binding. An appeal hereunder must be filed with the civil service commission within ten working days after notice to the employee of the denial of an outside work permit or limitations or conditions imposed on an outside work permit. The secretary of the civil service commission shall send a copy of the appeal to the city manager upon receipt of the appeal.

(Prior code § 2012.3.)

Attachment B

SAN JOSE CITY CHARTER

Section 407. The Council; Compensation.

Each member of the Council, including the Mayor, shall be paid as compensation for his or her services as a member of the Council, for each calendar month during which he or she is a member of the Council, a monthly salary which shall be established by ordinance adopted pursuant to and in accordance with the provisions hereinafter set forth in this Section. No salary shall be established for any member of the Council, including the Mayor, except as provided in this Section.

Between March 1st and April 30th of every odd-numbered year, the Council Salary Setting Commission shall recommend to the Council the amount of monthly salary which it deems appropriate for the members of the Council, including the Mayor, for the two year period commencing July 1 of that odd-numbered year. The amount recommended for each member of the Council shall be the same, except that the amount recommended for the Mayor may exceed that of the other members of the Council. The monthly salary shall be in an amount which takes into account the full time nature of the office and which is commensurate with salaries then being paid for other public or private positions having similar full time duties, responsibilities and obligations.

No recommendation shall be made except upon the affirmative vote of three (3) members of the Commission. Failure of the Commission to make a recommendation in any year within the time prescribed shall be deemed to mean a recommendation that no change be made.

Each biennial recommendation, together with the reasons therefore, shall be made in writing. Before it submits any such recommendation to the Council, the Commission shall conduct at least one public hearing on the matter. When such a recommendation has been submitted to the Council, it shall not thereafter be amended by the Commission.

The Council shall, by ordinance, which shall be subject to the referendum provisions of this Charter, adopt the salaries as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.

No more than one salary setting ordinance shall be adopted on the basis of any biennial recommendation, provided that the Council may, at any time, by ordinance, reduce the salaries of the members of the Council, including the Mayor. In any salary setting ordinance adopted hereunder, the salaries for each member of the Council shall be the same, except that the salary of the Mayor may exceed that of the other members of the Council. Salaries established by ordinance adopted pursuant to the provisions of this Section shall remain in effect until amended by a subsequent ordinance adopted pursuant to the provisions of this Section.

For each member of the Council, except the Mayor, a sum, as established by the Council Salary Setting Commission, shall be deducted from the salary of such member for each regular meeting of the Council, other than regular adjourned meetings, which he or she fails to attend in each

such calendar month; provided, however, that such deduction shall not be made for his or her failure to attend any meeting during which he or she is away on authorized City business, or from which he or she is absent because of his or her own illness or the illness or death of a close family member. No deduction shall be made from the Salary of the Mayor because of his or her failure to attend any Council meeting.

Amended at election June 7, 1966

Amended at election June 5, 1973

Amended at election November 4, 1980

Amended at election November 4, 1986

Attachment C

HISTORY OF MAYOR AND COUNCIL SALARIES

At the July 17, 1933 election an amendment to the 1916 Charter was passed which approved payment of \$5 per Council meeting, not to exceed \$25 in a month, to all members of the Council, including the Mayor. Apparently, Council Members were not paid prior to that Charter change. Adoption of the 1965 Charter distinguished between the Mayor and Council Members' salaries and set new salaries to be effective July 1, 1967. (see below)

An amendment to Section 407 of the 1965 Charter was approved at the November 4, 1980 election which established a Council Salary Setting Commission to meet in odd-numbered years to recommend Mayor and Council salaries. The Council, by ordinance, adopts the recommended salaries, or a lesser amount.

Section 407 was again amended at the November 4, 1986 election to state that the salary be an amount which takes into account the full-time nature of the office and which is commensurate with salaries being paid for other public or private positions having similar full-time duties, responsibilities and obligations.

Authorizing Legislation	Date Salary Became Effective	COUNCIL Salary	MAYOR Salary
1965 Charter adopted	July 1, 1967	\$400/mo	\$600/mo
Ordinance 20683	July 1, 1981	\$15,000/yr	\$20,500/yr
Ordinance 21330	July 1, 1983	\$24,000/yr	\$31,750/yr
Ordinance 21996	July 1, 1985	\$26,200/yr	\$35,000/yr
Ordinance 21996	July 1, 1986	\$27,700/yr	\$37,000/yr
Ordinance 22531	July 1, 1987	\$40,000/yr	\$60,000/yr
Ordinance 22531	July 1, 1988	\$41,400/yr	\$62,100/yr
Ordinance 23194	July 1, 1989	\$45,750/yr	\$68,600/yr
Ordinance 23194	July 1, 1990	\$48,000/yr	\$72,000/yr
Ordinance 23809	July 1, 1991	\$52,800/yr	\$80,000/yr
Ordinance 24383	July 1, 1993	\$52,800/yr	\$80,000/yr
Ordinance 24874	July 1, 1995	\$54,400/yr	\$82,500/yr
Ordinance 24874	July 1, 1996	\$56,000/yr	\$85,000/yr
Ordinance 25299	July 1, 1997	\$58,240/yr	\$87,550/yr
Ordinance 25299	July 1, 1998	\$60,570/yr	\$90,180/yr
Ordinance 25873	July 1, 1999	\$62,500/yr	\$92,500/yr
Ordinance 25873	July 1, 2000	\$65,000/yr	\$95,000/yr
Ordinance 26384	July 1, 2001	\$70,000/yr	\$100,000/yr
Ordinance 26384	July 1, 2002	\$75,000/yr	\$105,000/yr
Ordinance 26897	July 1, 2003**	\$79,500**	\$111,300**
Ordinance 26897	July 1, 2004**	\$84,270**	\$117,978**
No Ordinance	July 1, 2005#	\$75,000#	\$105,000#
"	July 1, 2006#	\$75,000#	\$105,000#

** Recommendations accepted but not implemented; July 2002 salaries remained in effect

Council took no action to change salaries on 5/10/05; July 2002 salaries remain in effect

Outside Employment – What Some Other California Jurisdictions Do

Los Angeles - Charter and municipal code prohibits mayor and members of the council from receiving any compensation, including honoraria, except that which may be provided for their serving on governmental entities where payment is authorized for other governmental officers serving in that capacity.

San Francisco - Charter prohibits the mayor from devoting time or attention to any other occupation or business activity. No restrictions on outside employment for members of the Board of Supervisors.

Oakland - Charter requires the mayor to devote full time and attention to the duties of the office and prohibits engaging in outside employment while in office. Allows for receipt of income earned from business(s) or investment(s) in which he/she is not actively engaged and which are not in conflict with the performance of his/her duties and responsibilities. No restrictions on outside employment for members of the council.

State Legislature - no restrictions on outside employment for members of the Senate and Assembly. There are state restrictions regarding income from lobbyists.

Santa Clara County - no restrictions on outside employment for members of the Board.